

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Adami, J.

EAST INDIAN RAILWAY COMPANY

v.

BADRI NARAIN.*

1927.

Jan., 4.

Code of Civil Procedure, 1908 (Act V of 1908), section 110—Appeal to His Majesty in Council—Valuation under Rs. 10,000, whether costs may be included.

Costs of the suit are in no sense the subject-matter of the suit in the court of first instance, and, therefore, cannot be added to that subject-matter in order to bring the valuation up to the appealable amount under section 110 of the Code of Civil Procedure Code, 1908.

Application by the defendant.

The facts of the case material to this report are stated in the judgment of the court.

N. C. Sinha and *N. C. Ghosh*, for the applicant.

S. M. Mullick and *S. N. Bose*, for the respondents.

DAWSON MILLER, C.J. and ADAMI, J.—This is an application on behalf of the East Indian Railway Company for leave to appeal from a decision of this court to His Majesty in Council. It appears that five suits claiming compensation for loss or damage to goods consigned by the plaintiffs to the East Indian Railway Company for carriage on their railway system were instituted by the same plaintiff against the Railway Company. The suits although they related to different consignments appear to have raised exactly the same questions for determination. They were accordingly heard together in the trial court and judgment was entered in favour of the plaintiffs.

On appeal by the Railway Company that judgment was reversed by the District Judge who dismissed the suits. Again the suits were tried together and decided in that appeal by the same judgment.

* Privy Council Appeals nos. 39 to 43 of 1926.

A further appeal was preferred by the plaintiffs to this court and amongst other points it was urged that the appeal before the District Judge was not competent. The ground upon which that argument was based was that two of the parties who had been plaintiffs in the trial court and who were members of the joint family to which the plaintiffs belonged were not added as parties in the appeal and that the Judge after the period of limitation had expired had improperly joined them as respondents under the provisions of Order XLI, rule 20, of the Code of Civil Procedure. This court took the view that the lower appellate court had acted improperly in joining the respondents under the provisions of that rule the period of limitation having expired before the order joining them was passed and accordingly held that the appeal to the lower appellate court was not competent and that the decision ought to be reversed. The court accordingly overruled the decision of the lower appellate court and restored that of the trial court.

From that decision the Railway Company now seeks to appeal to His Majesty in Council. None of the five suits taken alone involve a claim to a sum of Rs. 10,000 or anything like it. If, however, the five suits should be consolidated, and we think that this would be a proper case in the circumstances for ordering consolidation for the purposes of pecuniary valuation under Order XLV, rule 4 of the Court of Civil Procedure, then the value amounts to roughly Rs. 8,870 or thereabouts. It follows therefore that the total value of the subject-matter of the suits when consolidated does not amount to the sum of Rs. 10,000. The learned Advocate for the appellant contends, however, that the costs amounting to a sum of Rs. 1,196 should be added to the amount of compensation claimed and awarded in order to bring the valuation up to Rs. 10,000. In our opinion this cannot be done. The costs of the suits are in no sense the subject-matter of the suit in the court of first instance and ought not to be added to that subject-matter in order to bring the

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valuation up to the appealable amount under the provisions of section 110 of the Code of Civil Procedure. The consequence is that in our opinion the case is not one which complies with the provisions of section 110 and the applications in these five suits and the application for consolidation must be dismissed. The respondents are entitled to their costs. There will be one set of costs.

Application dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Foster, J.

1926-27. SECRETARY OF STATE FOR INDIA IN COUNCIL

Dec., 8, 9;
 Jan., 21.

v.

NISTARINI ANNIE MITTER*.

Registration Act, 1908 (Act XVI of 1908), section 90(1)—lease of land by Government, whether exempted from registration—ejusdem generis, rule of, whether applicable to section 90(1)(d)—Transfer of Property Act, 1882, (Act IV of 1882), section 107, whether applies to leases granted by the Crown—Crown Grants Act, 1895 (Act XV of 1895), section 2.

Section 17(1), Registration Act, 1908, requires the following documents to be registered :

“(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent”.

Section 90(1)(d), however, exempts from registration, *inter alia*,

“sanads, inam title deeds and other documents purporting to be or to evidence grants or assignments by Government of land or any interest in land”.

Held, that a lease of land by Government is covered by section 90(1)(d) and is exempt from registration.

Held, further, that the words “other documents purporting to be or to evidence grants or assignments by Government

* First Appeals nos. 60 and 61 of 1923, from a decision of Babu Phanindra Lal Sen, Subordinate Judge of Hazaribagh, dated the 25th January, 1923.